

WWR#040260160

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

IN RE:

Harry C. Auel, Jr.

Debtor.

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:  
:  
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Case No. 18-14314

Chapter 7

Judge Beth A. Buchanan

Real property located at  
1742 Clough Pike, Batavia, OH 45103

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY  
UNDER 11 U.S.C. § 362 AND FED. R. BANKR. P. 4001(a)(3)**

Now comes U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for Loan Acquisition Trust 2017-RPL1, (“Movant”), by and through its undersigned counsel, and moves this Court pursuant to 11 U.S.C. § 362(d), and Fed. R. Bankr. P. 4001(a)(3) to terminate, modify or condition the automatic stay in effect under these code and rule provisions. Support for this Motion is set forth in the following Memorandum.

Respectfully submitted,

/s/ Laura L. Peters

LAURA L. PETERS #0063425

**Weltman, Weinberg & Reis Co., L.P.A.**

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Counsel for Creditor

U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for Loan Acquisition Trust 2017-RPL1

### **MEMORANDUM IN SUPPORT**

1. Jurisdiction over this matter is vested in this Court pursuant to 28 U.S.C. §1334(b), and the general order of reference previously entered in this district. This matter is a “core proceeding” under 28 U.S.C. §157(b)(2)(G).

2. Movant is the holder of a Note and Mortgage executed by Debtor on July 26, 2006. The subject property located at 1742 Clough Pike, Batavia, OH 45103, is described in the attached and incorporated documentation. A copy of the Note is attached hereto as Exhibit “A”, a copy of the Mortgage with Assignments are attached hereto as Exhibit “B” and a copy of the Deed is attached hereto as Exhibit “C”.

3. The value for this property is \$171,700.00, pursuant to Debtor’s Schedule A and the amount due and owing is \$244,253.60. Upon information and belief, there are no other liens on the property.

4. As of January 14, 2019, Debtor is due post-petition for the December 1, 2018 payment and all subsequent payments in the amount of \$4,168.80. Debtor has failed to make payments to the Movant for the use and depreciation of this property. As a result, the Movant has been denied adequate protection for its collateral and is entitled to relief from the automatic stays pursuant to 11 U.S.C. §362(d)(1).

5. Debtor does not have equity in the collateral and the collateral is not necessary for a successful reorganization. As a result, the Movant has been denied adequate protection for its collateral and is entitled to relief from stay pursuant to 11 U.S.C § 362(d)(2).

6. Pursuant to Debtor’s Statement of Intention (Doc 4), Debtor intends to surrender the real property.

7. Automatic stays are currently operative under 11 U.S.C. §362 and Fed. R. Bankr. P. 4001(a)(3). These stays should be terminated, modified or conditioned for the following reasons set forth above.

8. Movant requests the Court to waive the 14-day stay period pursuant to Bankruptcy Rule 4001(a)(3) so that Movant can immediately enforce any order granting relief from the automatic stay.

WHEREFORE, relief from the automatic stays is therefore warranted for a cause, and lack of adequate protection under 11 U.S.C. §362(d)(1) and (d)(2) and Fed. R. Bankr. P. 4001(a)(3).

Respectfully submitted,

/s/ Laura L. Peters

LAURA L. PETERS #0063425

**Weltman, Weinberg & Reis Co., L.P.A.**

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Counsel for Creditor

U.S. Bank Trust National Association, not in its  
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Loan Acquisition Trust 2017-RPL1

Form 4001-1(a)

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**RELIEF FROM STAY / ADEQUATE PROTECTION  
EXHIBIT AND WORKSHEET – REAL ESTATE  
(for use as required by LBR 4001-1(a)(1))**

Real property address which is the subject of this motion: 1742 Clough Pike, Batavia, OH 45103

**DEBT / VALUE REPRESENTATIONS:**

Total indebtedness of the debtor(s) at the time of filing the motion for relief from stay (not to be relied upon as a payoff quotation)	\$244,253.60
Movant's estimated market value of the real property	\$171,700.00
Source of the estimated valuation	Debtor's Schedule A

**STATEMENT OF ARREARAGE:**

(1) As of petition filing date:	\$2,099.40
Amounts paid after the date of filing to be applied to the prepetition default:	\$0.00
(2) Postpetition:	\$4,168.80
(3) Monthly payment amount:	\$2,084.40
(4) Date of Last Payment:	10/15/2018
(5) Amount of Last Payment:	\$2,084.40
# of payments due postpetition	2
# of payments received postpetition	0
# of payments in default postpetition	2
Total amount of postpetition payments currently in default	\$4,168.80
+ Postpetition late charges	\$

+ Other postpetition charges (describe)	\$
Foreclosure title work	\$
Filing fee	\$
Skip Trace	\$
Document acquisition costs	\$
Service Process server	\$
Escrow Shortage	
Hazard Insurance	\$
Taxes	\$
Appraisal	\$
BPO Charges	\$
Property Inspection	\$
Other (specify)	\$
= Total Postpetition Arrearage	\$4,168.80

**OTHER LOAN INFORMATION:**

Date of the Loan	July 26, 2006
Current Interest Rate	8.5900%

Money paid to and held by the mortgagee but not applied to the loan 0; if held in the form of checks, balance of such checks \$0, and identity of holder of the checks 0.

**REQUIRED ATTACHMENTS TO MOTION:**

(a) In a Chapter 13 case, a postpetition payment history.

(b) In all cases, copies of documents which indicate movant's interest in the subject property. For purposes of example only, a complete and legible copy of the promissory note or other debt instrument together with a complete and legible copy of the real estate mortgage should be attached. The mortgage should bear date stamps reflecting the recording date together with recording references reflecting the recordation of the mortgage with the appropriate county official. If the

subject property is registered land, movant shall attach a copy of the registered land certificate or other documentation reflecting that the mortgage was memorialized as a lien on the registered land certificate.

This Exhibit and Worksheet was prepared by:

Name: LAURA L. PETERS #0063425  
WELTMAN, WEINBERG & REIS  
From information provided by client

Street Address: 3705 Marlane Drive  
City, State, Zip: Grove City, OH 43123

Fax Number: 614-801-2601  
Email Address: lpeters@weltman.com

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Case No. 18-14314

Chapter 7

Judge Beth A. Buchanan

Real property located at  
1742 Clough Pike, Batavia, OH 45103

**NOTICE OF MOTION FOR RELIEF FROM STAY AND CERTIFICATE OF SERVICE**

U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for Loan Acquisition Trust 2017-RPL1 has filed papers with the Court to obtain relief from stay.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.**

If you do not want the Court to grant the relief sought in the Motion, then on or before twenty-one (21) days from the date set forth in the certificate of service for the Motion, you or your attorney must:

1. File with the Court, a responsive memorandum explaining your position, by mailing your response by ordinary U.S. Mail to 221 E. Fourth Street, Atrium Two, Suite 800, Cincinnati, Ohio 45202 OR your attorney must file a response using the court's ECF System.
2. The court must **receive** your response on or before the above date.

3. You must also send a copy of your response by 1) the court's ECF System or by 2) ordinary U.S. Mail to the undersigned, creditor's attorney, and to all parties, besides yourself, listed on the Certificate of Service provided below.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief without further hearing or notice.

#### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Relief from Stay was served: (i) **electronically** on the date of filing through the court's ECF System on all ECF participants registered in this case at the email address registered with the court and (ii) by **ordinary U.S. Mail** on January 23, 2019 addressed to:

Harry C Auel, Jr  
1742 Clough Pike  
Batavia, OH 45103

/s/ Laura L. Peters  
LAURA L. PETERS #0063425